



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

Ms. Sandra D. Hachem
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR95-207

Dear Ms. Hachem:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31276.

Harris County received a request for two items of information. You say the county will release the second item, but the county seeks to withhold from required public disclosure the first item based on section 552.103 of the Government Code.

Section 552.103(a) applies to information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You assert that the requested information relates to reasonably anticipated litigation.

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. See Open Records Decision No. 288 (1981). Moreover, when an attorney for the potential opposing party made a demand for disputed payments and threatened to sue if suitable payments were not made promptly, the exception applies. See Open Records Decision No. 346 (1982).

You contend that litigation is reasonably anticipated because an individual stated in a letter to this office, dated November 24, 1994, that he "is currently filing a multi-million dollar civil rights suit against these [governmental] agencies, [one of which is the county]" for failure to release information requested under the Open Records Act. We do not agree that this statement establishes that litigation against the county is reasonably anticipated. You have provided no concrete evidence that the potential opposing party intends to sue the county. We therefore conclude that the county may not withhold the information based on section 552.103 of the Government Code. The county must release the information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 31276

Enclosures: Submitted documents

cc: Mr. Leslie Morgan
T-220 677163
Route 1 Box 150
Tennessee Colony, Texas 75884
(w/o enclosures)